

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jerry L. Smith,

Petitioner-Appellant,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-77-1517
Parcel No. 090/03328-000-000**

On January 19, 2011, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Jerry Smith designated Linda Lawson as his representative. The Polk County Board of Review designated Assistant County Attorney Anastasia Baker Hurn as its legal representative. Both parties presented evidence in support of their positions. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Jerry L. Smith is the owner of a residentially classified, single-family residence located at 1142 37th Street, Des Moines, Iowa. The property is a one-story home, built in 1910, and has 1168 square feet of total living area. The unfinished basement is 1120 square feet. There is also a 210 square foot enclosed front porch, a 70 square foot open front porch, and a 60 square foot enclosed rear porch. The property condition is rated as "poor." The site is 0.258 acres.

Smith protested to the Polk County Board of Review regarding the 2009 assessment allocated as follows: \$31,700 in land value and \$61,500 in improvement value for a total assessment of \$93,200. Smith asserted the market value of the subject property was \$50,000. Smith's claim was based on the

following grounds: 1) that the assessment was not equitable compared with the assessments of other like property under Iowa Code section 441.37(1)(a); 2) that the property was assessed for more than the value authorized by law under section 441.37(1)(b); and 3) that there is an error in the assessment under section 441.37(1)(d). The error Smith claimed was that the “home was deteriorating.” The Board of Review agreed and reduced the January 1, 2009 assessment to \$65,800.

Smith then appealed to this Board reasserting the claim of inequity.

Smith offered eight properties as equity comparables to the Board of Review and submitted sixty-five new properties for comparison to this Board. Fifteen properties were submitted to demonstrate inequity with 2009 total assessments ranging from \$24.48 per-square-foot to \$51.96 per-square-foot. Lawson testified that comparing these total assessments to the subject property’s total assessment of \$56.34 per-square-foot clearly indicates the subject is inequitably assessed. However, we do not find these properties to be similar to the subject property. Many of the properties are nearly 1000 square feet larger in gross living area (GLA), based upon attached photographs some appear to be either superior or inferior in condition, and none of the properties have two bedrooms like the subject. Additionally, there were no adjustments made to these properties for noted differences, none of the properties were sales or otherwise had a market value opinion assigned to them, and there was no comparison made between their market value and their assessed value to determine a ratio analysis.

Lawson also provided twenty-five sales of homes within the last four years. Of these, none appear to be comparable to the subject property in regards to style, size, or condition. Additionally, only four of the twenty-five sales occurred in 2008. In this case, we do not consider sales prior to 2008 as relevant to a January 1, 2009, assessment. We note again, that the four 2008 sales presented do not appear to be comparable to the subject property. Lawson testified that she considered this information as part of her equity analysis comparing assessed values to the “market values” or sales prices of the twenty-five homes. However, she compared the January 1, 2009, assessment of these properties to

their respective dates of sale, which occurred anywhere from 2005 thru 2008. We would not consider the 2005 thru 2007 sales for an equity analysis of a January 1, 2009, assessment. However, the 2008 sales could have been considered if Lawson had compared the 2008 sales prices to the January 1, 2008, assessment to develop a ratio analysis. For an assessment sales ratio study to be conducted properly, the year of the sales and the year of the assessments must be identical. *Cottingham v. Iowa Dept. of Rev.*, Docket 347, p. 4, (Iowa State Bd. of Tax Rev. 1982). Because the sales prices were not compared to the correct assessment year we find this information unreliable.

Lastly, Lawson submitted twenty-five improved properties that had reductions to their site value in 2009. Similar to the previous data presented, the sites were not adjusted for differences, many are significantly larger, and it is unknown if locations are superior or inferior to the subject property. Neither Lawson nor Smith asserted the properties were valued using a different assessing method.

The Board of Review submitted an appraisal completed by Michael W. Swaim, of Swaim Appraisal Services, West Des Moines, Iowa. Swaim completed an appraisal of the subject property with an effective date of January 1, 2009. The appraisal developed only the sales comparison approach to value and estimated the market value of the subject property at \$67,000.

Swaim included four comparable properties that sold between May 2008 and November 2008 with a sales price range of \$60,000 to \$74,160. After considering differences in the properties, the adjusted range of value was \$58,500 to \$73,200. All four sales were two-bedroom homes similar to the subject property. Swaim testified this was an important element of comparison because the size of the subject property typically has at least three bedrooms. Due to the lack of sales of two bedrooms and in similar condition to the subject, Swaim relied on three real estate owned (REO) or "short sale" properties. This is highly unusual. Swaim's explanation was that the uniqueness of the subject property resulted in these sales being the most comparable. Swaim testified he considered deficiencies of the subject property such as "electrical, mechanical, plumbing, exterior paint, and a dated kitchen"

both in his selection of comparables and his analysis. Swaim does not believe three or four bedroom homes will compete with the subject property even if they offered similar GLA. This Board will not rely on unadjusted foreclosure sales even though Swaim presented an argument as to the necessity in this case, and considered this factor within his qualitative analysis.

Additionally, we note that Lawson testified she was told by the Board of Review that she could not use foreclosure sales in Smith's petition, citing them as abnormal transactions. We agree because foreclosure sales are abnormal transactions under Iowa Code section 441.21(1)(b) and require adjustment to be comparable for assessment purposes. In this case, however, the Board of Review's appraiser relied primarily on foreclosure sales without adjustment. It would have been prudent for the Board of Review to heed its own advice. In an abnormal sale, if the distorting sale factors between the assessed property and the other property are not quantifiable so as to permit the required adjustment, the other property will not be considered comparable. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009) (citing *Bartlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 94 (Iowa 1977)).

Lawson testified in a heartfelt manner that she believes Smith's assessment is inequitable. However, we are not convinced the data presented are of similarly situated or comparable properties and insufficient evidence has been provided to demonstrate the subject is inequitably assessed.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only

those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 579-580. The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1).

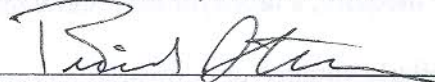
Smith provided a multitude of properties considered as equity comparables but we do not find the properties to be reasonably similar to the subject property, nor was the equity analysis complete.

THE APPEAL BOARD ORDERS the assessment of the Smith's property located at 1142 37th Street, Des Moines, Iowa, of \$65,800, as of January 1, 2009, set by the Polk County Board of Review, is affirmed.

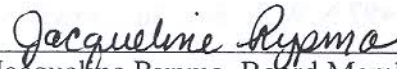
Dated this 23 day of February, 2011



Karen Oberman, Board Chair



Richard Stradley, Board Member



Jacqueline Rypma, Board Member

Cc:

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 2-23, 2011

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☐ Other

Signature 